REMARKS

Claims 1-19 are pending in the application. Claims 1-3, 8, 10, 13 and 16-19 have been amended, which amendments do not introduce any new matter.

I. CLAIM OBJECTIONS

Claims 1-3, 8, 10, 13, and 16-19 were objected to because of the use of the term "if." To remedy this objection, the term "if" has been replaced with "when" in these claims in accordance with the Examiner's request.

II. REJECTION OF INDEPENDENT CLAIMS UNDER 35 U.S.C. § 102(b).

Independent claims 1 and 13 have been rejected under 35 U.S.C. § 102(b) as being anticipated U.S. Pat. No. 7,027,418 (Gan). Withdrawal of these rejections is respectfully requested for at least the following reasons.

A. Independent Claim 1

i. Gan does not teach "detecting multiple erroneous transmissions in the frequency channel at a time that is independent of the other channels", as recited in amended claim 1.

In Table 1 and Table 2, Gan shows two examples of channels being classified as "good" channels or "bad" channels. *See generally*, Gan at col. 15-16. Although Gan broadly teaches that each channel can be classified as "good" or "bad", Gan does not teach "detecting multiple erroneous transmissions in the frequency channel at a time that is independent of the other channels."

For example, in Table 1, Gan shows that Channel Nos. 1 through N each have ten tests applied thereto. Because each channel has the same number of tests applied thereto, ***it seems that a common time period (i.e., the time period for ten tests to be evaluated) is used for all channels to classify the individual channel as "good" or "bad."*** In contrast, presently amended claim 1 states that ***detecting erroneous transmissions occurs on the frequency channel at a time that is independent of***

the other channels. Thus, one channel could detect erroneous transmissions during one time period, and another channel could detect erroneous transmissions during another time period that is independent of the first time. Therefore, the invention of present claim 1 allows interference to be determined in a flexible manner that is not taught by the prior art of record.

Therefore, because Gan does not teach all elements of amended claim 1, Gan fails to anticipate the invention of claim 1 and its associated depending claims. Accordingly, withdrawal of this rejection is respectfully requested.

B. Independent Claim 13

i. Gan does not teach "evaluating a channel for interference associated therewith at a time that is independent of the other channels", as recited in amended claim 13.

Somewhat akin to independent claim 1, independent claim 13 suggests that the evaluation of a channel for interference occurs at a time that is independent of the other channels.

As highlighted above with respect to claim 1, Gan does not teach this feature. Because Gan fails to teach all elements of independent claim 13, withdrawal of this rejection is respectfully requested.

III. REJECTION OF DEPENDENT CLAIMS UNDER 35 U.S.C. § 102(b).

Applicants have shown that Gan fails to teach all the limitations of independent claims 1 and 13. As the remaining claims depend from these independent claims, the applicants reiterate those arguments from above and respectfully request withdrawal of the rejections. In addition, the applicants assert some additional arguments in favor of the allowability of various dependent claims.

A. Dependent Claim 3

i. Gan does not teach a counter associated with each channel that is incremented upon erroneous transmission and decremented upon error-free transmission, and determining the interference in the frequency channel if the count exceeds a prescribed threshold value, as recited in claim 3.

Although Gan broadly teaches that each channel can be classified as "good" or "bad", Gan also fails to teach incrementing a counter upon erroneous transmission and decrementing a counter upon error-free transmission. For example, in Table 2, Gan teaches a system in which each participant casts a vote for a particular channel. These votes are then tallied. If the Total Votes (*i.e.*, the tally) is greater than or equal to a predetermined "Passing Mark", then the channel is deemed "Good". Otherwise the channel is "bad." *See* Gan at col. 16.

By examining Gan's scheme, one can quickly see why Gan does not teach the present invention of claim 3. ***First of all, Gan does not increment a counter upon erroneous transmission.*** For example, in Channel 0, all seven slaves have individually determined the channel is "bad", yet the total votes is still "0". Thus, assuming the total votes started at "0", a counter has not been incremented upon erroneous transmission. ***Secondly, Gan does not decrement a counter upon error-free transmission.*** For example, in Channel n-1, all eight nodes (*i.e.*, the master and seven slaves) have determined the channel is "good", but the total number of votes is eight. Therefore, Gan actually ***increments*** the counter upon error-free transmission in stark contrast to the present claims, which require that the counter be ***decremented*** upon error-free transmission.

Accordingly, because Gan does not teach all elements of claim 3, withdrawal of this rejection is respectfully requested.

B. Dependent Claim 6

i. Gan does not teach measuring the external signal strength during unused timeslots, as recited in claim 6.

Because Gan does not expressly or inherently teach this feature, the Applicants respectfully request withdrawal of this rejection.

In addition, although it has been alleged that "one skilled in the art would know that measuring and testing is usually performed during unused timeslots" (*see* pending Office Action at page 4), this finding seems to go to whether the claimed invention is non-obvious under §103. Even if a §103 rejection had been made, the rejection would be improper because it is improper to take official notice in this instance. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "***capable of such instant and unquestionable demonstration as to defy dispute***" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). *See also* MPEP §2144.03. Because the elements of claim 6 do not meet this high standard, if a §103 rejection were asserted as to this claim, the applicants would request documentary evidence as to this finding.

C. Dependent Claim 16

i. Gan does not teach incrementing a counter each time an erroneous transmission is identified, and decrementing the counter each time an error free transmission is identified, as recited in claim 16.

As argued above with respect to claim 3, Gan does not teach this feature. Accordingly, withdrawal of this rejection is respectfully requested.

IV. CONCLUSION

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 50-1733, LLP113US.

Respectfully submitted,
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